



Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact support@jstor.org.

not necessary to plead the ordinance. You will see that this rule is supported by the following cases: *Cragg vs. Los Angeles Trust Co.*, 154 Cal. 663 (See full note on this subject in 16 Am. & Eng. Cas. 1061, 1064); *Fresno Traction Co. vs. A. T. & S. Fe Ry. Co.*, 175 Cal. 358; *Lininger vs. San Francisco etc. R. R. Co.*, 18 Cal. App. 411; and *Stadler vs. Pacific Electric Ry. Co.*, 23 Cal. App. 571.

I am taking the liberty of calling your attention to this matter in view of your invitation in the first number of the 7th volume to readers to communicate such matters to you, when noticed.

Yours truly,

Delger Trowbridge.

Comment on Recent Cases

CORPORATIONS: MEANING OF "CAPITAL STOCK" IN STATUTES.—The case of *Merchants and Insurers Reporting Co. v. Youtz*¹ raises the question as to the meaning of the phrase, "capital stock," and its proper use. When used in its true, technical sense it denotes the aggregate of the par value of all the shares of stock at the time of incorporation. It is the amount fixed by the corporate charter to be paid in by the stockholders, either at the time of incorporation or later.² It is to be distinguished from the property of the corporation.³ The latter may be partly composed of franchises, good will and surplus, which are no part of the capital stock,⁴ which is fixed in amount by the charter. The value of the property of a corporation fluctuates with its success or failure. Although part or all of the capital stock may have been invested in property and is thus represented by it, a great part of the property of the corporation may have come from other sources.

The capital of a corporation is its actual holdings in property or money on which it conducts its business.⁵ The capital may be equal in amount and value to the capital stock but in all probability

¹ (1918) 27 Cal. App. Dec. 889.

² *Cook, Corporations*, §§ 8, 191. *State v. The Morristown Fire Association* (1851) 23 N. J. Law 195; *Person and Riegel Co. v. Lipps* (1907) 219 Pa. 99, 67 Atl. 1081.

³ *State v. The Morristown Fire Association*, *supra*, n. 2; *Tennessee v. Whitworth* (1885) 117 U. S. 129, 29 L. Ed. 830, 6 Sup. Ct. Rep. 645.

⁴ *People ex. rel. Union Trust Co. v. Coleman* (1891) 126 N. Y. 433, 27 N. E. 818, 12 L. R. A. 762.

⁵ *Person and Riegel Co. v. Lipps*, *supra*, n. 2.

it is entirely different. The practice of modern corporations is to name a sum in the charter as capital stock much larger than the actual working capital, but there may also be cases where the actual capital is greater than the capital stock.

There is confusion in the decisions as to the meaning and application of the terms capital and capital stock. In many instances they are taken to be synonymous,⁶ while in others they are carefully distinguished.⁷ In construing certain taxation statutes the courts have, in order to arrive at the intent of the legislature, construed the term capital stock to mean property,⁸ and capital stock has been confounded with shares of stock, though it is clearly not the same.⁹ Capital stock belongs to the corporation. It is the amount of money paid in or to be paid in by the stockholders. Shares of stock represent the entire interest of the shareholder in the corporation.

In California the courts have been called upon to construe the phrase capital stock in section 309 of the Civil Code. The established definition which they have always given to it is that it is the actual money, property or other valuable commodity with which the corporation transacts business.¹⁰ In other words, under this section it is held that when the legislature said capital stock it really meant capital. The court recognizes the distinction between capital and capital stock,¹¹ but seems to regard the two terms as interchangeable.¹²

It seems clear from the provisions of section 309 of the Civil Code that the result arrived at by the court is correct. Its purpose would seem to be to preserve the capital of the corporation intact, for the benefit of creditors and stockholders. Although the prohibition of this section runs in terms only against the directors, it applies equally to the stockholders, depriving them of power to distribute the capital of the corporation except in the manner provided by law.¹³ It applies not only to an improper declaration of dividends but to any other unauthorized reduction of the capital.¹⁴ Because of this section, it follows that in California a

⁶ *First National Bank v. Durr* (1917) 246 Fed. 163.

⁷ *Christensen v. Eno* (1887) 106 N. Y. 97, 12 N. E. 648.

⁸ *People v. Wemple* (1892) 133 N. Y. 323, 31 N. E. 238.

⁹ *Farrington v. Tennessee* (1877) 95 U. S. 679, 24 L. Ed. 558; *Hawley v. City of Malden* (1913) 232 U. S. 1, 58 L. Ed. 477, 34 Sup. Ct. Rep. 201.

¹⁰ *Martin v. Zellerbach* (1869) 38 Cal. 300.

¹¹ *Excelsior v. Pierce* (1891) 90 Cal. 131, 27 Pac. 44; *Burne v. Lee* (1909) 156 Cal. 221, 104 Pac. 438; *Schulte v. Boulevard etc. Co.* (1913) 164 Cal. 464, 129 Pac. 582.

¹² *Kohl v. Lilienthal* (1889) 81 Cal. 378, 385, 20 Pac. 401, 22 Pac. 689.

¹³ *Hedges v. Frink* (1917) 174 Cal. 552, 163 Pac. 884; *Schulte v. Boulevard Gardens Land Co.*, *supra*, n. 11; *Tapscott v. Mexican Colorado River Land Co.* (1908) 153 Cal. 664, 96 Pac. 271. Opinion *contra* expressed in decision in department in *Baldwin v. Miller & Lux* (1907) 152 Cal. 454, 92 Pac. 1030 but at rehearing in bank decision turned on a different ground.

¹⁴ *Tapscott v. Mexican Colorado River Land Co.*, *supra*, n. 13; *Schoake v. Eagle etc. Can Co.* (1902) 135 Cal. 472, 63 Pac. 1025, 67 Pac. 759.

corporation cannot as a rule purchase its own stock, though in certain exceptional cases it may be allowed to do so.¹⁵

Admirable as the effort of the courts to conform the results of statutes to that intended by the legislature may be, it is regrettable that it has resulted in such a confusion of the terms, "capital," "capital stock," "property" and "shares of stock," as exists in the cases. Each expression has a separate and distinct meaning, and refers to entirely different things. The legislature is the real offender, since in drafting the statutes it uses the terms in such a manner as to force the courts to depart from the ordinary meaning of the words in order to carry out the obvious intent of the law.

P. M.

COURTS MARTIAL: HABEAS CORPUS.—In *United States ex rel. Doughty v. Hunt*¹ a writ of *habeas corpus* issued on behalf of the relator, who was then held imprisoned under sentence of a general court-martial. For the relator it was contended that the evidence had shown him to have been in a "daze" or "stupor" at the time he committed the offense for which the court-martial had tried and convicted him; that this fact was sufficient to raise the issue of mental derangement; and the presence of this issue was sufficient, under the provisions of the Manual for Courts-Martial,² to deprive the court of its right further to proceed with the case.

Upon return of the writ it was held by the District Court that the evidence in question did not *ipso facto* raise the issue of mental derangement; and that consequently the release of the relator could not be ordered, for, in the language of the opinion, "a civil court has no power to interfere with the conduct of a court-martial except in a case where that court has exceeded its jurisdiction." And when jurisdiction is established in the beginning, it is not lost "by any mistake in the general conduct of the case," but only upon a showing "that there is some point in the proceedings where the court actually lost entire jurisdiction over the case."

To this enunciation of the rule no novelty attaches, for it has long been an established principle of law that *habeas corpus* can liberate one held to answer by a court-martial only when the jurisdiction of that court-martial can be impugned.³ Courts-

¹⁵ *Stewart v. Stewart Hotel Co.* (1917) 33 Cal. App. 167, 164 Pac. 624.

¹ (December 9, 1918) 254 Fed. 365.

² § 219. "Where the existence of mental disease or derangement on the part of the accused, either at the time of trial or at the time of the commission of the alleged wrongful act, becomes an issue in the trial of the case, the court will stop its proceedings and immediately report the fact to the convening authority."

³ *Dynes v. Hoover* (1858) 61 U. S. 65, 15 L. Ed. 838; *Smith v. Whitney* (1886) 116 U. S. 167, 29 L. Ed. 601, 6 Sup. Ct. Rep. 570; *Carter v. McClaughry* (1901) 183 U. S. 365, 46 L. Ed. 236, 22 Sup. Ct. Rep. 181; *Mullan v. United States*, (1909) 212 U. S. 516, 53 L. Ed. 632, 29 Sup. Ct. Rep.